No. 80-1925

Office-Supreme Court, U.S.
FILED
MAY 30 1981
R L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED TRANSPORTATION UNION,

Petitioner,

—v.—

LONG ISLAND RAILROAD COMPANY

and

METROPOLITAN TRANSPORTATION AUTHORITY,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

May 30, 1981

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Counter-Statement of the Question Presented

Should this Court grant certiorari to review the decision of the Court of Appeals that labor relations on the state-owned and operated Long Island Rail Road are governed by state law rather than the federal Railway Labor Act, on the basis of undisputed facts in the record showing that the railroad is an intrastate commuter railroad with only an insignificant terminal freight operation and by direct application to those facts of this Court's analysis in *National League of Cities v. Usery*?

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Statutory Provisions Involved

Those statutory provisions involved which are not a part of the appendix to the Petition are set forth in the Appendix, *infra*.

Counter-Statement of the Case

Proceedings Below

Petitioner United Transportation Union (the "union") is one of seventeen unions representing the public employees of The Long Island Rail Road Company (the "LIRR"), a railroad owned and operated by the State of New York. The union commenced this action against the LIRR and its corporate

parent, Metropolitan Transportation Authority ("MTA"), a state agency, on December 7, 1979, the eve of the union's December 8 strike against the LIRR. The union sought a declaration that the Railway Labor Act* ("RLA") rather than state law governed labor relations on the railroad, thus permitting the union's members to evade state law sanctions if they struck the railroad after collective bargaining had run its course. The District Court held that the RLA governs the LIRR's labor relations and preempts state law, and granted the union's motion for summary judgment. The Court of Appeals for the Second Circuit unanimously reversed the District Court decision. Relying on this Court's decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976), as it applied to the facts of this case, the Second Circuit held that the RLA unconstitutionally impairs New York State's ability to structure employer-employee relationships in one of its agencies, the LIRR, in the state's role as the sole provider of an essential public service. [3a**] The union's application for rehearing with suggestion for rehearing *en banc* was denied by the Court of Appeals.

Background of Dispute

On January 20, 1966 the State of New York, acting through its chosen governmental instrumentality, Metropolitan Commuter Transportation Authority (since renamed Metropolitan Transportation Authority), purchased from the Pennsylvania Railroad all of the capital stock of the latter's wholly-owned subsidiary corporation, The Long Island Rail Road Company, and rescued that ill-starred line from inevitable bankruptcy [J.A. 288***]. MTA was then, and is today, a state agency. The form of the railroad's operating entity, a stock corporation, was continued under state legislation giving MTA the option to hold and operate its properties through stock subsidiaries—in

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* 45 U.S.C. §§ 151 *et seq.*

** Citations in the form "___ a" refer to the pages in the appendix to the Petition.

*** Citations in the form "J.A. ___" refer to pages in the joint appendix in the Court of Appeals.

which event the employees of the subsidiary were not treated as public employees under state law—or through public benefit corporation subsidiaries, in which event the officers and employees of the operating entity automatically became public employees. 1966 N.Y. Laws, Chapter 415, §§ 2 and 5. On February 8, 1980, fourteen years after the acquisition, MTA converted its LIRR subsidiary from a stock corporation to a public benefit corporation and LIRR officers and employees thereby became public employees. The principal objective of this action was to subject the railroad's 6,800 employees to the state's so-called Taylor Law, N.Y. Civ. Serv. Law §§ 200-214 (9 McKinney's Consolidated Laws of New York), a law drafted along the lines of the National Labor Relations Act, which comprehensively regulates labor relations between the 900,000 unionized governmental employees in the State of New York and their 3,300 state and municipal employers and, *inter alia*, prohibits strikes by those employees.

MTA had valid reasons both for permitting the concept of a private employment relationship to continue for so long and for converting the relationship to a public one. Those reasons, set forth in the District Court record in this case and repeated below, relate to the unique characteristics and history of the LIRR. They belie the union's claim that the decision of the Court of Appeals sustaining MTA's efforts has widespread ramifications.

* * * * *

The LIRR is a unique railroad with a unique history. Unlike any other federally-regulated rail carrier, it has always been predominantly an intrastate passenger railroad. Its participation in the handling of interstate freight movements which have reached Long Island—the only possible basis for RLA jurisdiction*—has always been a relatively minor portion of its

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* RLA coverage of railroads depends upon coverage of the employer under the Interstate Commerce Act. Interstate Commerce Act coverage, in turn, exists only if the employer is actually engaged in interstate activity, freight or passenger. An employer such as the LIRR whose activities are limited to a single state is not covered by either act, unless, as in the case of

activities. Even in 1926, when the RLA was enacted and when railroading was still a prosperous business, LIRR freight revenues accounted for just 31.7% of gross revenues [J.A. 277-278].

By February, 1980, when MTA converted the railroad to public benefit corporation status, the LIRR passenger operation, conducted entirely within the state, had increased from 73.65 million passengers in 1966, when the state acquired the railroad, to 77.37 million [J.A. 275]. That ridership was preponderantly of the journey-to-work variety, no different in kind than New York City's subway ridership [J.A. 269]. But while the intrastate passenger ridership had held up, freight operations had plummeted. Only 40,936* freight cars were handled in 1979, compared with almost 114,000 in 1966 [J.A. 275]. While freight revenue had constituted 11.8% of gross LIRR revenue in 1966, it was down to but 4% in 1979 [J.A. 277]. In 1979 the LIRR operated 275,324 passenger trains and just 4,472** freight trains [J.A. 287]. And most telling of all these statistics, in 1979 the number of LIRR operating personnel engaged in handling freight had dwindled to a mere 307 bodies, less than 5% of the railroad's work force [J.A. 287].

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the LIRR freight service, it participates with other carriers in effecting rail movements which, combined, produce a journey crossing state lines. 45 U.S.C. § 151, cl. First; 49 U.S.C. § 10501(a) and (b); *United States v. Union Stock Yard*, 226 U.S. 286 (1912).

* As a gauge of the insignificance of this number, Conrail reported handling 4.876 million cars that year in its Form QCS filed with the Interstate Commerce Commission.

** This number actually overemphasizes the size of the freight operation. In 1979 these freight trains averaged less than 10 cars each. This is typical of a "terminating" railroad such as the LIRR. The LIRR does not act as a "bridge" carrier carrying through traffic which originates and terminates off-line, nor does it have any significant local traffic. Virtually all of its freight traffic is "interline" (exchanged with other railroads) and 90% of that traffic consists of goods destined for delivery on Long Island.

RLA coverage had not been conducive to labor peace on the railroad during the fourteen years of state ownership. The craft union mandate of the RLA regarding the composition of bargaining units, 45 U.S.C. §§ 151, cl. Fifth and 152, cl. Fourth, which made sense in an industry which historically had bargained with its unions on a nationwide basis, continued to sustain a total of no less than seventeen unions on the LIRR property, one with as few as five members and another with just twelve [J.A. 290]. But while these seventeen unions took advantage of a national law to protect their separate identities, they studiously disassociated themselves from the periodic national labor settlements negotiated by their parent "international" unions and refused to be bound by them. Instead, each of them insisted on bargaining "locally" and, worse still, separately with management [J.A. 290]. Labor negotiations on the LIRR had become a year-round proposition which preoccupied the railroad's management personnel and impaired their ability to operate the railroad safely and reliably [J.A. 290]. RLA ineffectiveness can be gauged by the fact that between 1966 and 1979 there were two open strikes (one lasting over 50 days), numerous job actions and no less than five property-wide negotiations which required intervention by the President of the United States and the establishment of Presidential fact-finding boards before settlement could be reached [J.A. 290].

During almost the whole of this period of labor unrest the state Taylor Law, which governs every other public employee, state and local, in the State of New York, had been in effect. Transition to its governance presented no great problems because its mechanics so greatly resembled RLA procedures, the principal substantive difference being the Taylor Law's denial of the right to strike and the absence of a statutory direction that bargaining units be structured along craft lines. Moreover, in 1968 the state Legislature had broadened MTA's mass transportation responsibility from 260,000 daily LIRR passengers to include New York City's 5.5 million daily subway

and bus riders, transforming this relatively small commuter railroad into a constituent part of the largest transit operation in the nation. 1967 N.Y. Laws, Chapter 717, § 60. The LIRR work force of 6,800 people had become just a small part of an MTA workforce of some 50,000 public employees, and the LIRR contingent was the only one not covered by the Taylor Law.

Finally, the state's financial stake in this commuter railroad had greatly increased between 1966 and 1980. Hundreds of millions of dollars of taxpayer subsidies had been invested in improvements to its capital plant. In 1979 alone the state had provided over $129 million of taxpayer funds to meet just the ordinary operating expenses of the railroad [J.A. 289]. Operating subsidies in that year accounted for 50% of LIRR gross income [J.A. 277-278].

By 1980 the LIRR bore no resemblance whatever to any railroad in the United States subject to RLA regulation, the fact of public ownership put aside. Those few railroads throughout the nation which were still conducting local passenger operations in addition to their freight operations, as a group, showed a ratio of interstate freight revenue to aggregate revenue of 96.9% [J.A. 273]. The LIRR showed 4% [J.A. 289]. The activities of just 307 LIRR employees were responsible for subjecting the railroad's entire work-force of 6,800 state employees to federal labor regulation, including a rule of law enacted in 1926, when the LIRR was in private hands as part of a vast interstate rail system, which countenanced strikes in direct opposition to the considered public policy of the State of New York.* It was in this factual setting that MTA acted to make LIRR employees public employees.

These unique circumstances clearly demonstrate that the legal issues resolved by the decision of the Court of Appeals

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* The public policy of the federal government is identical. Federal employees may not strike. 5 U.S.C. § 7311.

will not have a direct bearing on railroads other than the LIRR or on employees or labor organizations other than those of the LIRR.

Reasons Why the Petition Should be Denied

The decision of the Court of Appeals, based on undisputed facts in the record, fully conforms to this Court's holding in *National League of Cities v. Usery.* It does not conflict in any way with prior decisions of this Court. In addition, the Court of Appeals decision does not conflict with any decision of any other circuit Court of Appeals. Finally, the Court of Appeals decision does not raise an important federal question which must be decided by this Court. It was concerned with a unique, local situation. Its effect on the general scheme of federal regulation in the area of interstate railroads is *de minimis.*

POINT I

The Application of the RLA to the LIRR Violates the Tenth Amendment by Displacing Essential Governmental Decisions of the State of New York.

The opinion of the Court of Appeals rightly relied upon the decision of this Court in *National League of Cities v. Usery, supra,* and its holding that "Congress may not exercise [the Commerce Power] so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." 426 U.S. at 855. Surely, when the federal government instructs a state that it must permit its employees to strike to enforce their wage demands, there has been as much an abrogation of the state's otherwise plenary authority to structure its relationship with its employees as there was when *National League of Cities* considered the effort by Congress to impose minimum wage, maximum hour and overtime pay constraints upon the States.

Surely, if "[o]ne undoubted attribute of state sovereignty is the States' power to determine the wages which shall be paid to those whom they employ . . . [and] what hours those persons will work," 426 U.S. at 845, another attribute is the power to determine *whether* they must work as a condition to retaining public employment. It cannot be doubted that the State of New York has always regarded its prohibition of strikes as an essential part of every public employment contract. Strikes were prohibited both under common law and under the Condon-Wadlin Law, the statutory predecessor to the Taylor Law. *City of New York v. De Lury*, 23 N.Y.2d 175, 295 N.Y.S.2d 901, 243 N.E.2d 128 (1968), *appeal dismissed*, 394 U.S. 455, *rehearing denied*, 396 U.S. 872 (1969); *Di Maggio v. Brown*, 19 N.Y.2d 283, 279 N.Y.S.2d 161, 225 N.E.2d 871 (1967).

POINT II

The Furnishing of Transit Service Is a Protected Function of State and Local Government Within the Rationale of *National League of Cities*.

The Court of Appeals properly included transit within the *National League of Cities* doctrine. This Court made it clear in that case that the "furnishing of public services" such as "fire prevention, police protection, sanitation, public health, and parks and recreation," 426 U.S. at 851, was not intended to be an "exhaustive catalogue of the numerous line and support activities which are well within the area of traditional operations of state and local governments." 426 U.S. at 852 n.16. Surely a transit system such as MTA's, which transports three million people to and from their jobs each working day with no practical alternative at hand for them if the system breaks down,* is providing an integral public service within the intendment of *National League of Cities*. The union's claim

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* It is estimated that there are some 1.81 million jobs between Central Park and the Battery. Tri-State Regional Planning Commission, *Metromoni-*

that the LIRR carries some small portion of its ridership to the "far reaches" of Long Island cannot obscure the fact that the LIRR is an important part of that transit system, serving a substantial daily ridership of 260,000 which is overwhelmingly commuter in nature [J.A. 286, 296]. Transit is not provided by government everywhere, but where it is provided, in the great cities of the nation and in the New York City metropolitan area in particular, it is literally essential* for the survival of millions.

The union emphasizes the use of the word "traditional" in the test of *National League of Cities*. It could of course be pointed out that municipal ownership and operation of transit facilities in the State of New York is not a new phenomenon, dating back to 1904, with the opening of the first municipally-built subway line, and to 1940, the year in which all private subway operators were supplanted by municipal employees; but it can be argued that the concept of tradition implies the need for a nationwide test, consistent with the line of cases in this Court dealing with intergovernmental immunity from taxation in our federal system.**

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tor—A Regional Review of Social and Economic Trends (July 1980). Two transit strikes during the past fifteen years have demonstrated that the automobile is not an alternative when so large a work force is compressed within so limited a geographical area.

* The terms "essential" and "integral" are, as used here, synonymous. Contrary to the union's contention, *National League of Cities* did not couple the "integral" test of a given public function with the additional requirement that the *function* be one the performance of which is essential to the separate and independent existence of the fifty States. The decision in that case made it clear that the activities which were deemed essential to the separate and independent existence of the States were the making of those determinations which control the employer-employee relationship and thus determine the cost of providing the function, such as the fixing of salaries, the establishment of a maximum number of work hours and the like. *National League of Cities*, 426 U.S. at 845, 851.

** "[W]e look to the activities in which the states have traditionally engaged as marking the boundary of the restriction upon the federal taxing power." *United States v. California*, 297 U.S. 175, 185 (1936). The view that

These taxation precedents give insight into the sense in which the term "traditional" was used in *National League of Cities*. Each of them involved a situation in which a state had embarked upon an activity in direct competition with private industry. In the leading case, *New York v. United States*, 326 U.S. 572 (1946), the state claimed that its sales of mineral waters constituted a "usual, traditional and essential governmental function," *id.* at 574, and was met by the response that it was ". . . in competition with private waters, the sale of which Congress has found necessary to tap as a source of revenue." *Id.* at 581. None of the cases holding state activities taxable involved circumstances in which competition had ended, a situation in which a state was forced to step in, not as a volunteer replacing a private citizen who would otherwise be paying federal taxes,* but rather to fill a void created by the mass withdrawal of private entrepreneurs. This, literally, is our case.**

Transit has changed. It is no longer provided by private entrepreneurs, as it was almost a half century ago when *Helvering v. Powers*, 293 U.S. 214 (1934), was decided. The Court of Appeals properly took judicial notice of the fact that the industry, today, may properly be characterized as one to which state and local governments have succeeded by default.

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there is no intergovernmental immunity when the Commerce Clause is invoked by Congress was rejected by *National League of Cities* when it overruled *Maryland v. Wirtz*, 392 U.S. 183 (1968). This Court appreciated that the power to regulate as much as the power to tax, unchecked, could "devour the essentials of state sovereignty". *National League of Cities*, 426 U.S. at 855, quoting Justice Douglas' dissent in *Wirtz*.

* *See* Justice Stone's opinion in *New York v. United States*, 326 U.S. at 590: "[T]he effect of the immunity on the national taxing power is to be determined not quantitively but by its operation and tendency in withdrawing taxable property or activities from the reach of federal taxation."

** It was also the case in *Amersbach v. City of Cleveland*, 598 F.2d 1033 (6th Cir. 1979), which was concerned with a similar phenomenon in the airport industry.

Transit is no longer a business; it is, today, almost exclusively a governmental service.*

In the Court of Appeals, the union cited statistics indicating that in the omnibus segment of the transit industry there are still 320 privately-owned companies in operation nationally, but the union failed to show how small a ridership those companies carry. Nor did it show how many of them are mere operating entities for municipalities and how many more are completely dependent on governmental subsidies for survival. The transit industry's trade association, the American Public Transit Association, reports a single dispositive fact: the publicly *owned* portion of the nation's transit network, *alone*, carries over 91% of the nation's transit ridership (5.456 billion trips annually). *Transit Fact Book* (1978-1979 Edition) at 39. The industry survives only as the result of massive governmental subsidies, subsidies which provide almost 50% of gross income. *Id.* at 19.**

Additional statistics can be marshaled to show that all fourteen of the nation's freight railroads which are still involved in transit,*** providing local passenger or "commuter"

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* It is principally for this reason that the "railroad" cases, *United States v. California*, 297 U.S. 175 (1936), *California v. Taylor*, 353 U.S. 553 (1957), and *Parden v. Terminal Ry.*, 377 U.S. 184 (1964), are not relevant. Although marked by numerous reorganizations, freight railroading in the United States—as opposed to local passenger railroading (see *infra*)—is still a private sector function. All three of those cases were concerned with freight railroading.

** The transit industry does not include intercity buses, a service still provided by the private sector, or intercity passenger railroading, a service provided exclusively by the federally-sponsored AMTRAK corporation. *Transit Fact Book* (1978-1979 Edition) at 48.

*** The union denies reality when it asserts that commuter railroad services are not a part of the transit industry and that commuter railroads do not provide "urban mass transportation" service. The very authority which the union cites for support in other contexts, the American Public Transit Association, recognizes that commuter railroading is an integral part of the transit industry. *Transit Fact Book* (1978-79 Edition) at 3, 7 and 48. And if such railroads do not provide "urban mass transportation" service, then how

services, are privately owned. Again, however, analysis shows how bankrupt their passenger services truly are. All fourteen operate under local subsidy contracts. *Transit Fact Book* (1978-1979 Edition) at 74 and 75. In the latest year in which statistics have been assembled, those passenger services had operating revenues of $370 million and operating expenses of $778 million. *Id.* at 74. As an indication of the ailing health of these passenger services, Conrail, the largest of the group, has a standing authorization from Congress to discontinue any part of its passenger operations which is not fully subsidized by local government. 45 U.S.C. § 744(e). The "commuter railroad" portion of the transit industry is publicly subsidized rather than publicly owned, as are buses and subways; obviously, there must be a single operating responsibility whenever freight trains and passenger trains must run over the same tracks. Fee ownership notwithstanding, the nation's commuter railroads, today, are being run for the account of the States. The union cannot deny this.

Transit, today, is no longer a business; it is a public service—a public service provided only by or for the account of the States.* When they provide that service they are necessarily

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can it be that the LIRR and virtually every commuter railroad in the nation have been routinely receiving federal capital and operating assistance under an "Urban Mass Transportation Act" which Congress enacted seventeen years ago? "Commuter" railroads were given that appellation because their principal function is to carry their passengers to and from their places of work each day. By definition, such a service is essentially local in nature. It is invariably underwritten by local and state governments. Typical examples are state agencies in New York (MTA), Illinois (Regional Transportation Authority of Northeastern Illinois), and Pennsylvania (Southeast Pennsylvania Transportation Authority), each of which provides the full spectrum of transit service, bus, subway and commuter railroad.

* Congress wants no part of transit save in its role as an indirect subsidizer under the Urban Mass Transportation Act of 1964, 49 U.S.C. §§ 1601 *et seq.* That act permits the making of federal grants of financial assistance only to states and municipalities. Each grant must be matched by a specified minimum percentage of local tax dollars and then applied by the state or the municipality, as the direct underwriter of the transit service, to the purchase of capital assets or the payment of operating deficits. This

acting "as States." *National League of Cities*, 426 U.S. at 845. Certainly they are no longer acting as "traders" among a larger group of private entrepreneurs* (*see* Justice Frankfurter's opinion in *New York v. United States*, *supra*, and Justice Douglas' dissent in *Maryland v. Wirtz*, *supra*), and certainly they have no hope of making a "profit" in competition with the private sector. *See* Chief Justice Burger's opinion in *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978).

Perhaps this phenomenon is not sufficiently aged in order for transit to deserve the adjective "traditional."** Perhaps, too, that is why *National League of Cities* used the terms "traditional" and "integral" interchangeably. Certainly it is the undeniable fact that if Congress were to tax transit today, it would be taxing the States and only the States; that if it were to regulate transit today, it would be regulating the States and only the States. If Congress, today, were to seek to regulate directly the activities of employers in the transit industry, it would indeed be an "exercise of congressional authority directed, not to private citizens, but to the States as States." *National League of Cities*, 426 U.S. at 845.

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program will likely diminish in the near term. The current Administration intends to eliminate all operating assistance within the next four years. *N.Y. Times*, Apr. 9, 1981, § B at 13.

* See Justice Powell's preliminary assumption in *Reeves, Inc. v. Stake*, ___ U.S. ___, 100 S.Ct. 2271, 2285 (1980), on the reach of *National League of Cities*: "The threshold question is whether South Dakota had undertaken integral government operations in an area of traditional governmental functions, *or whether it has participated in the marketplace as a private firm.*" (Emphasis added.)

** The transition to public ownership is hardly a new development, however. Publicly owned transit systems were carrying over 50% of the nation's transit ridership as early as 1967. *Transit Fact Book* (1978-79 Edition) at 55.

POINT III

The Small Fraction of LIRR Interstate Freight Activity Should Not Tip the Scales in Favor of Federal Regulation.

A small portion of the LIRR's business is involved in the interstate movement of freight cars, even though all of its tracks lie entirely within New York's boundaries. It has been shown, *supra*, how small that involvement is. The Court of Appeals stated that LIRR passenger revenues provided over 80% of total revenue [24a], but this was indeed an understatement. Earlier in its opinion that court correctly recited that freight revenues, at $12.1 million in 1979, compared with total income (gross revenues combined with public subsidies) of $300 million in that year [4a]. It is the fact that the federal interest in this case, based on 1979 data, is marked by $12.1 million in revenue, or 4% of total LIRR income, and 307 employees, less than 5% of the LIRR work force. The state's interest is the remaining $287.9 million of income (96% of the whole), all 6,800 of the railroad's employees and all 260,000 of its daily riders. The Court of Appeals weighed* these factors one against the other, which Justice Blackmun viewed the plurality as having done in *National League of Cities*, and found in favor of the Tenth Amendment. No other answer is permissible.

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* It should be remembered that the weighing of these factors was not done in the context of a federal law which sought to exercise the Commerce Clause to the fullest permissible extent. In our case, unlike *National League of Cities*, Congress has expressly limited the scope of RLA regulation to businesses actively engaged in interstate commerce and it has expressly exempted those whose activities are conducted entirely within the boundaries of a single state. 45 U.S.C. § 151, cl. First; 49 U.S.C. § 10501(a) and (b). To read such a statute as sweeping into its ambit the whole of an intrastate business simply because 4% of its revenues derives from the interstate aspect of its operations is indeed a strain on the Supremacy Clause.

Conclusion

For the foregoing reasons, the petition should be denied.

May 30, 1981

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APPENDIX

1966 Laws of New York, Chapter 415
Sections 2 and 5

(New material shown bold;
deleted material shown italic.)

§ 2. Subdivision nine of section twelve hundred sixty-five of such law, as amended by chapter six hundred thirty-four of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

9. (a) Notwithstanding section one hundred thirteen of the retirement and social security law or any other general or special law, the authority and any of its subsidiary corporations may continue or provide to its affected officers and employees any retirement, disability, death or other benefits provided or required for railroad personnel pursuant to federal or state law. Notwithstanding any provisions of the civil service law, no officer or employee of *any* **a subsidiary** corporation *acquired by* **of** the authority, **other than a public benefit subsidiary corporation,** shall be a public officer or a public employee;

(b) The authority and any of its **public benefit** subsidiary corporations may be a "participating employer" in the New York state employees' retirement system with respect to one or more classes of officers and employees of such authority or any such **public benefit** subsidiary corporation, as may be provided by resolution of such authority or any such **public benefit** subsidiary corporation, as the case may be, or any subsequent amendment thereof, filed with the comptroller and accepted by him pursuant to section thirty-one of the retirement and social security law. In taking any action pursuant to this paragraph (b), the authority and any of its **public benefit** subsidiary corporations shall consider the coverages and benefits continued or provided pursuant to paragraph (a) of this subdivision;

* * * * *

§ 5. Subdivision five of section twelve hundred sixty-six of such law, as added by chapter three hundred twenty-four of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

5. The authority may acquire, **hold**, own, lease, establish, construct, effectuate, operate, maintain, renovate, improve, extend or repair any of its facilities through, **and cause any one or more of its powers, duties, functions or activities to be exercised or performed by**, one or more wholly owned subsidiary corporations of the authority and may transfer to or from any such corporation any moneys, real property or other property for any of the purposes of this title. *If the authority determines from time to time to form such a subsidiary corporation, it shall do so by executing and filing with the secretary of state of New York a certificate of incorporation, which may be amended from time to time by similar filing, and which shall set forth the name of such subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing, constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Such subsidiary corporation shall be a body politic and corporate constituting a public benefit corporation.* The directors **or members** of **each** such subsidiary corporation shall be the same persons holding the offices of members of the authority. *Such subsidiary corporation shall have all the powers vested in the authority itself for the purposes of this title except that it shall not have the power to contract indebtedness. Such* **Each such** subsidiary corporation and any of its property, functions and activities shall have all of the privileges, immunities, tax exemptions and other exemptions of the authority and of the authority's property, functions and activities. *Such* **Each such** subsidiary corporation shall be subject to the restrictions and limitations to which the authority may be subject. *Such* **Each such** subsidiary corporation shall be subject to suit in accordance with section twelve hundred seventy-six of this title *as if such subsidiary corpora-*

tion were the authority itself. The employees of any such subsidiary corporation, except those who are also employees of the authority, shall not be deemed employees of the authority.

If the authority shall determine that one or more of its subsidiary corporations should be in the form of a public benefit corporation, it shall create each such public benefit corporation by executing and filing with the secretary of state a certificate of incorporation, which may be amended from time to time by filing, which shall set forth the name of such public benefit subsidiary corporation, its duration, the location of its principal office, and any or all of the purposes of acquiring, owning, leasing, establishing, constructing, effectuating, operating, maintaining, renovating, improving, extending or repairing one or more facilities of the authority. Each such public benefit subsidiary corporation shall be a body politic and corporate and shall have all those powers vested in the authority by the provisions of this title which the authority shall determine to include in its certificate of incorporation except the power to contract indebtedness.

Whenever any state, political subdivision, municipality, commission, agency, officer, department, board, division or person is authorized and empowered for any of the purposes of this title to co-operate and enter into agreements with the authority such state, political subdivision, municipality, commission, agency, officer, department, board, division of person shall have the same authorization and power for any of such purposes to co-operate and enter into agreements with *such* a subsidiary corporation **of the authority.**

1967 Laws of New York, Chapter 717, Section 60

§ 60. Legislative findings and declaration of purpose

It is hereby found and declared that:

The development and operation of public-owned mass transportation facilities serving the New York metropolitan region are currently the responsibility of several agencies;

Significant progress has been made on the task of coordinating planning for such facilities within such region through the establishment by the states of New Jersey, Connecticut and New York of the tri-state transportation commission;

It is the sense of the legislature, as a matter of state concern, that a greater degree of coordination of effort should now be sought with respect to the activities of four such agencies which are presently responsible for the development and operation of certain of the more important of these facilities, these agencies being the metropolitan commuter transportation authority, the New York city transit authority, the triborough bridge and tunnel authority and the Manhattan and Bronx surface transit operating authority;

To this end it is the purpose of this title to place each of these authorities under common control by a single board and to impose upon that board the additional responsibility of developing and implementing a unified mass transportation policy for such region.